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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,975	07/15/2004	Jean-Marie Laborbe	3714652-00491	3409
29157	7590	04/16/2010	EXAMINER	
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			THAKUR, VIREN A	
			ART UNIT	PAPER NUMBER
			1782	
			NOTIFICATION DATE	DELIVERY MODE
			04/16/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/501,975	Applicant(s) LABORBE ET AL.	
	Examiner VIREN THAKUR	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,11,14,16 and 22-46 is/are pending in the application.
- 4a) Of the above claim(s) 25-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10,11,14,16 and 38-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Upon reconsideration, the rejection of claims under 35 U.S.C. 112, first paragraph has been withdrawn.
2. Upon reconsideration and in view of applicants' remarks, the rejections of the claims under 35 U.S.C. 112, second paragraph have also been withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 10-11,14,16,23,24, 38-42,44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prasad (WO0065937) in view of Dupont-Delhovren (US 5567466) and in further view of Horrocks et al. (US 3898345), Ariss et al.**

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(GB2315399), Palmer (US 3808340), Ito et al. (US 5059444) and Ziegler (US 3073700) for the reasons given in the previous Office Action, mailed December 14, 2009, and in further view of Hagen et al. (US 3586512) and Mizutani et al. (JP58-190364) and Igoe (Dictionary of Food Ingredients).

Claims 10, 38 and 46 newly recite that the coating comprises "sodium alginate in an amount from about 1% to about 2%." Regarding this limitation, it is noted that the combination as applied above, already teaches the use of binders in the coating composition (page 12, lines 18-19 of Prasad, for instance). Prasad appears silent in using sodium alginate. Obviously, to thicken and increase the viscosity of the coating composition would have provided the recognized advantage of improved coating, due to less fluidity of the coating. Nevertheless, Hagen et al. teaches adding a hydrophilic binding material to the food coating for the purpose of giving the coating a desired degree of cohesive and adhesive forces which would assure that the coating adheres to the foodstuff prior to and after cooking (column 6, lines 5-12). Hagen et al. further teaches that another function of the hydrophilic binder also controls the color development when cooking (column 6, lines 29-33) and can be employed at 2%, for instance, using a mixture that includes alginates and gums and carboxymethyl cellulose (column 6, lines 34-41). Mizutani et al. similarly teaches coating a food with a coating comprising an alginate, such as sodium alginate, for the purpose of achieving a coating on the food. Obviously, sodium alginate has been a well known emulsifier/binder/thickener, as even further evidenced by Igoe. Since Prasad already teaches that a binder can be employed, to thus modify the combination and employ

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sodium alginate at 2%, as taught by Hagen et al. and Mizutani et al., would thus have been an obvious result effective variable, routinely determined by experimentation for the purpose of achieving the desired flowability for attaining the desired thickness of the coating on the food.

Regarding claims 16 and 42, which newly recite that “the coating further comprises a component selected from the group consisting of a thickener in addition to the sodium alginate, a binder, an additive, flour, water and combinations thereof, the rejection as applied in the previous Office Action, mailed December 14, 2009 already teaches adding an ingredient from the Markush group, such as water to the coating.

6. Claims 22 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 10-11,14,16,23,24, 38-42,44-46, above in paragraph 5, and in further view of Hood (US 4089983), Corbett et al. (US 4508741), Francis (The Encyclopedia of Food Science and Technology), University of Chicago, Dictionary of Food Science and Technology, Durst (US 3434843), Igoe (The Dictionary of Food Ingredients), Stoloff (US 2567085), Coppage et al. (US 3965259) and Palmer (US 3873736), for the reasons given in the previous Office Action, mailed December 14, 2009.

7. Claims 10, 12,14,16, 23,24,38, 40-42,44,45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horrocks et al. (US 3898345) in view of Ito et al. (US 5059444), Dupont-Delhovren (US 5567466), and Ziegler (US 3073700),

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for the reasons given in the previous Office Action, mailed December 14, 2009 and in further view of Hagen et al. (US 3586512) and Mizutani et al. (JP58-190364).

Claims 10, 38 and 46 newly recite that the coating comprises “sodium alginate in an amount from about 1% to about 2%.”

Regarding this limitation, Horrocks et al. teaches adding sodium alginate for coagulating the coating (column 4, lines 4-25). Regarding the particular amount of sodium alginate employed, it is noted that Hagen et al. and Mizutani et al. teach employing alginates for similar purposes as Horrocks et al. (for binding/thickening/emulsifying), wherein the alginate is within the claimed range, as discussed above in the rejection relying on Prasad as the primary reference. To thus modify Horrocks et al. and employ an alginate at 2%, for instance, for the purpose of achieving a desired thickness to the coating would have been an obvious result effective variable, routinely determined by experimentation, for the purpose of achieving the desired flowability for attaining the desired thickness of the coating on the food.

Regarding claims 16 and 42, which newly recite that “the coating further comprises a component selected from the group consisting of a thickener in addition to the sodium alginate, a binder, an additive, flour, water and combinations thereof, the rejection as applied in the previous Office Action, mailed December 14, 2009 already teaches adding an ingredient from the Markush group, such as water to the coating.

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8. Claims 22 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 10, 12, 14, 16, 23, 24, 38, 40-42, 44, 45, and 46, above in paragraph 7, and in further view of Prasad et al. (WO0065937), Hood (US 4089983), Corbett et al. (US 4508741), Francis (The Encyclopedia of Food Science and Technology), Dictionary of Food Science and Technology, Durst (US 3434843), Igoe (The Dictionary of Food Ingredients), Stoloff (US 2567085), Coppage et al. (US 3965259) and Palmer (US 3873736) for the reasons given in the previous Office Action, mailed December 14, 2009.

Response to Arguments

9. Regarding the rejection of the claims under 35 U.S.C. 112, first paragraph, in view of applicants' remarks and upon reconsideration, the rejection has been withdrawn.

10. Regarding the rejection of the claims under 35 U.S.C. 112, second paragraph, in view of applicants' remarks and upon reconsideration, the rejection has been withdrawn.

11. On pages 11-13 of the response, applicants urge that the combination applied against claims 10-12, 14, 16, 22-24 and 38-46 does not disclose or suggest all the claim

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limitations such as the sodium alginate employed at 1-2%. This argument is moot in view of the new grounds of rejection, above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1782

/V. T./
Examiner, Art Unit 1782